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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-353

No. COA21-549

Filed 17 May 2022

Watauga County, No. 20JT18

IN THE MATTER OF:

J.B.D.

A Minor Child.

Appeal by respondent from order entered 29 June 2021 by Judge F. Warren Hughes in Watauga County District Court. Heard in the Court of Appeals 14 December 2021.

Richard Croutharmel for respondent-appellant.

Rivenbark Attorney at Law, by Nancy M. Rivenbark, for petitioner-appellee, no brief.

GORE, Judge.

¶ 1 Respondent-father appeals from the trial court's order terminating his parental rights to J.B.D. ("Jed").[1] On appeal, respondent-father argues the trial court erred: (1) by failing to appoint Jed a guardian ad litem ("GAL") in the termination of parental rights ("TPR") proceedings; and (2) by concluding TPR grounds exist for both

[1] We use a pseudonym to protect the identity of the juvenile and for ease of reading.

failure to legitimate and abandonment. After careful review, we determine that respondent-father has not preserved his arguments on these issues for appeal. We therefore affirm the trial court's order.

I. Background

¶ 2 The facts and procedural history pertinent to this appeal are as follows: On 20 March 2020, Jed's mother ("petitioner") filed a petition to terminate the parental rights of respondent-father on grounds of abandonment, failure to pay child support, failure to legitimate Jed, and dependency. On 14 April 2020, respondent filed a *pro se* answer in the form of a letter asking, "that the court will not terminate my parental rights."

¶ 3 After a hearing conducted on 26 May 2021 and 9 June 2021, and in separate Adjudication and Disposition Orders entered 29 June 2021, the trial court terminated respondent's parental rights to Jed on grounds of failure to legitimate and abandonment. On 12 July 2021, respondent filed notice of appeal from the Order Terminating Parental Rights.

II. Discussion

A.

¶ 4 Respondent-father first argues the trial court reversibly erred by failing to appoint Jed a GAL for the TPR proceeding in violation of N.C. Gen. Stat. § 7B-1108(b) (2021). Our Juvenile Code provides that when a parent files an answer or response

to a TPR petition or motion that

> denies any material allegation of the petition or motion, the court *shall* appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition or motion was filed by the guardian ad litem pursuant to G.S. 7B-1103, or a guardian ad litem has already been appointed pursuant to G.S. 7B-601.

§ 7B-1108(b) (2020) (emphasis added). However, respondent acknowledges he failed to raise an objection to the asserted error at trial, and, thus, has not preserved this issue for appellate review. *See In re Fuller*, 144 N.C. App. 620, 623, 548 S.E.2d 569, 571 (2001) (discussing the "respondent's noncompliance with our rules" by failing to object to a violation of § 7B-1108(b) at the trial level); *In re Barnes*, 97 N.C. App. 325, 326, 388 S.E.2d 237, 238 (1990) (holding that the respondent failed to preserve the issue of whether the trial court reversibly erred in its failure to appoint a GAL for the juvenile when there was no objection or exception made at the trial level).

¶ 5 Respondent asks this Court to invoke Rule 2 of the North Carolina Rules of Appellate Procedure to address the merits of his argument. We have previously invoked Rule 2 to reach this issue, and ultimately reversed termination orders, having determined the facts warranted suspension of our rules to prevent manifest injustice to the juvenile or respondent-parent. *In re Fuller*, 144 N.C. App. at 623, 548 S.E.2d at 571; *In re Barnes*, 97 N.C. App. at 326-27, 388 S.E.2d at 238; *but see In re A.D.N.*, 231 N.C. App. 54, 65-66, 752 S.E.2d 201, 208-09 (2013) (determining that the

trial court violated § 7B-1108(b), but ultimately declining to invoke Rule 2 because the facts did not necessitate suspension of our rules), *rev. denied*, 367 N.C. 321, 755 S.E.2d 626 (2014).

¶ 6 Having reviewed the record and the arguments set forth in respondent's brief, we decline to invoke Rule 2 in this case. Petitioner filed her TPR petition on 20 March 2020. Respondent filed a *pro se* answer on 14 April 2020, which states, "I wrote three different letters so that the court will not terminate my parental rights. . . . I love my son with all my heart[,] and I want to be a good father to him. I just want a chance to prove that." Respondent's answer did not "admit or deny the allegations of the petition . . .", § 7B-1108(a), nor did it "den[y] any material allegation of the petition . . . ." § 7B-1108(b). Thus, the requirements of § 7B-1108(b) were not met, and the trial court was not required to appoint Jed a GAL in accordance with the statute. Respondent's argument is, therefore, overruled. *In re A.D.N.*, 231 N.C. App. at 65-66, 752 S.E.2d at 208-09.

B.

¶ 7 Next, respondent-father contends the trial court reversibly erred in concluding that TPR grounds existed for both failure to legitimate pursuant to § 7B-1111(a)(5) and abandonment pursuant to § 7B-1111(a)(7). He argues that certain findings of fact in the underlying Adjudicatory Order are unsupported by clear, cogent, and convincing evidence, and that the remaining findings of fact do not support the

conclusions of law.

¶ 8 However, we note in the record that respondent filed notice of appeal only from the Order Terminating Parental Rights filed on 29 June 2021. Both orders were filed the same day, but the Adjudication Order is separate and distinct from the Disposition Order from which he appeals. "Rule 3(d) of the North Carolina Rules of Appellate Procedure requires that a notice of appeal designate the order from which appeal is taken. An order remains final and valid when no appeal is taken from it." *In re D.R.F.*, 204 N.C. App. 138, 141, 693 S.E.2d 235, 238, *rev. dismissed*, 364 N.C. 616, 705 S.E.2d 359 (2010) (*purgandum*). "[A] respondent's failure to appeal an adjudication order generally serves to preclude a subsequent collateral attack on that order during an appeal of a later order terminating the parent's parental rights." *In re A.S.M.R.*, 375 N.C. 539, 544, 850 S.E.2d 319, 323 (2020). As a result, the "adjudication order remains valid and final, and we do not address respondent['s] alleged errors as to that order." *In re D.R.F.*, 204 N.C. App. at 141, 693 S.E.2d at 238, *rev. dismissed*, 364 N.C. 616, 705 S.E.2d 359 (2010).

III. Conclusion

¶ 9 For the foregoing reasons, we affirm the order of the trial court.

AFFIRMED.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).